

## Incorporation - NSW

This page provides general information on incorporation of associations under the Associations Incorporation Act 1984. References to the Act refer to this legislation, which is administered by the Office of Fair Trading.

### **What is an association?**

It is common in our community for groups of people to come together to pursue a common interest. This may be to engage in a hobby, social or cultural exchange or to provide a community benefit. These groups are loosely called 'associations'.

Associations of people do not have to be incorporated, they may remain, simply, as an association of people and they are not subject to any laws to govern how they are to be organised or what name they have. There are laws that may affect their activities and the liability of the association or its members.

Incorporation by an association has been an option available to these groups in New South Wales since 1984. **Incorporation is voluntary.**

This page is intended to provide some basic information about the nature of incorporation. Follow the links on the left to other pages which will assist you in understanding the obligations of an incorporated association under the relevant legislation.

Whether to incorporate is a matter of choice for your group. Your group should obtain advice from a solicitor, accountant, governing or funding body on this option if there is some uncertainty about its suitability.

### **What are the benefits of incorporation as an association?**

The purpose of the Act is to provide non-commercial organisations, particularly community groups and clubs, a simple, inexpensive mechanism to gain an independent legal identity.

As a legal body in its own right, an incorporated association can:

- enter into and enforce contracts including the power to hold, acquire and deal with property,
- sue or be sued, and
- continue regardless of changes to membership.

The existence of a separate legal entity means that the association bears liability for its acts. Briefly, this means that claims made against an association, either as debts or compensation for negligence, are answerable by the association and not the individual members.

Members of an incorporated association have limited liability. In general terms, this means that they are only liable for the amounts each member owes the association in respect of their membership. For most associations this means the fees or subscriptions due to the association. Members of the management committee of an association also have limited liability for the debts of an association as long as they follow accepted business and community standards.

Groups seeking government grants will frequently find that it is a condition of their grant that they be incorporated.

Is there a limit to the size or income of an incorporated association?

The purpose of the Act is to allow small, community based groups a simple, inexpensive means of establishing a legal entity separate from its members. There is no maximum limit to the number of members, however, the Act requires that there be a minimum of 5 members.

An association will be refused incorporation or directed to transfer its incorporation, if the Commissioner for Fair Trading is satisfied that incorporation as an association is inappropriate or inconvenient by reason of the Commissioner's assessment of:

- the likely scale or nature of the activities of the proposed incorporated association,
- the likely value or nature of the property of the proposed incorporated association (as a guide, the amount of \$500,000 as a measure of assets, income or expenditure is used to determine whether it is appropriate for the proposed association to be incorporated under the Act), and
- the likely nature and extent of the proposed incorporated association's dealings with the public.

### **Is the association required to have all of its operations in NSW?**

There is no express legislative requirement that the association have all of its operations in NSW. However, it is not appropriate that the association be incorporated within NSW but have all or the majority of its operations outside NSW.

The legislation imposes duties and liabilities upon the association and members of the committee. The association must also ensure that it is able to meet all the statutory requirements to have documents and records accessible to its members and authorised officers of the Office of Fair Trading.

If an association wishes to establish an office or carry on some of its activities outside of NSW, it should obtain advice from the Australian Securities and Investments Commission (ASIC) or its own legal adviser about registering as a Registerable Australian Body under the Corporations Act 2001.

In addition, the Act expressly requires that the person applying for incorporation of an association and the public officer be a resident of NSW.

## Statutory obligations

Incorporation benefits an association and its members, however it also brings a number of statutory obligations. Failure to comply with these obligations may lead to prosecution, or in some instances, cancellation of the incorporation of the association.

This page provides general information on statutory obligations of associations under the Associations Incorporation Act 1984. References to the Act refer to this legislation, which is administered by the Office of Fair Trading.

### **What are the reporting obligations of an incorporated association?**

An incorporated association must hold an annual general meeting at least once in each calendar year.

The first annual general meeting must be held within 18 months of the date of incorporation and within 6 months after the expiration of the first financial year of the association. The second and any subsequent annual general meeting must be held within 6 months after the end of the incorporated association's financial year.

Within one month after the annual general meeting an Annual Statement (Form 12) must be filed with the Registry.

### **Does the association have any other obligations?**

An incorporated association has a number of other obligations. A number of these obligations are expressly imposed on officers of the association. They include the requirement to:

- ensure that the association's full name appears in legible characters on all official documents, including business letters, accounts, official notices, publications, cheques and receipts. Section 12(4) sets out the list of documents upon which the full name of the association must appear,
- act in accordance with its objects and rules (section 18),
- notify the Commissioner for Fair Trading if the position of public officer becomes vacant and appoint a new public officer within 14 days (section 23),
- ensure proper accounting records are kept which correctly record and explain the transactions of the association and its financial position (section 28),
- ensure that minutes of all committee and general meetings are kept (section 28),
- ensure that the association does not incur debts if there are reasonable grounds to expect that the association will not be able to pay all its debts as and when they fall due (section 38), and ensure that the association does not do any act with intent to defraud creditors or any other person (section 38).